



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON VA 22203-1837

REPLY TO
ATTENTION OF

August 12, 1999

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
TW-A325
Washington, D.C. 20554

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AUG 12 1999

FCC MAIL ROOM

Subject: Comments of DOD in WT Docket No. 99-217 and CC Docket No. 96-98

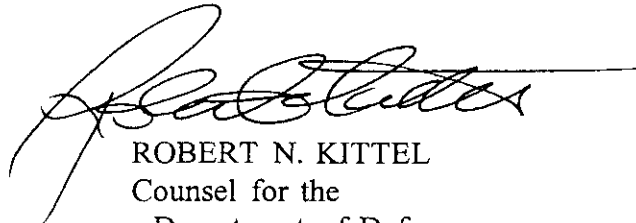
Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and four copies of the Comments of the U.S. Department of Defense.


Two additional copies are included as this proceeding consists of two dockets.

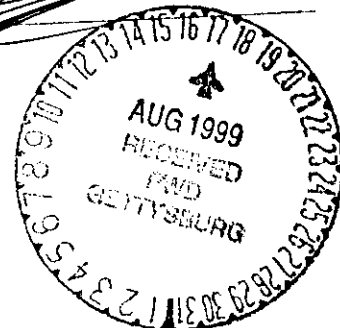
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Sincerely,


ROBERT N. KITTEL
Counsel for the
Department of Defense

cc:
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Commissioner Furchgott-Roth
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Commissioner Tristani
Commissioner Powell
International Transcription Services, Inc.


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**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of

Promotion of Competitive Networks)
in Local Telecommunications Markets)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

RECEIVED
AUG 12 1999 WT Docket No. 99-217
FCC MAIL ROOM CC Docket No. 96-98

**COMMENTS OF THE
DEPARTMENT OF DEFENSE**

The Department of Defense (DOD) submits these comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (collectively the NPRM.) relating to Competitive access to buildings and rooftops.

Introduction and Summary

DOD has for many years strongly endorsed this Commission's efforts as well as those of state public utility commissions to foster effective competition in all telecommunications markets, including the market for local exchange services. For this reason, DOD supports the Commission's proposals in this NPRM to extend the benefits of competition to multiple tenant environments, such as apartment and office buildings, office parks, shopping centers, and manufactured housing communities. DOD endorses the Commission's tentative conclusions with respect to the opening of competitive access to utility-controlled riser conduit and rights-of-way in multiple tenant environments. DOD also supports the Commission's objectives in seeking non-discriminatory competitive access to facilities controlled by premises owners.

However, DOD is concerned with the likelihood that rules which might seem reasonable in the environment of multi-tenant office and apartment buildings, shopping centers, office parks and

1
NAME OF FILING PARTY: DEPARTMENT OF DEFENSE
DATE OF FILING: AUGUST 12, 1999

manufactured housing communities are not reasonable and could become counter-productive in the types of facilities operated by DOD.

As discussed herein, the unique characteristics of military installations and the telecommunications systems that serve them require that the military services (both appropriated and non-appropriated fund activities) have the flexibility to contract with individual providers without fear that the contracts will be compromised by claims of non-discriminatory access by competing vendors. DOD is not seeking to preserve monopolies. To the contrary, the military services are required by statute to procure any product or service, including telecommunications, through competitive bidding so long as there are multiple potential providers available. Thus, the "exclusive" contracts that DOD might sign with specific telecommunications providers are the result - not a contradiction - of the competitive market for telephone services.

Therefore DOD requests that military installations and the activities of appropriated and non-appropriated fund entities of the DOD be exempt from the requirements outlined in this proposed NPRM.

ARGUMENT

To understand DOD's concerns, it is necessary to review some of the unique characteristics of DOD facilities.

1. Military Telecommunications Systems Are Unique

While DOD does own and lease conventional office buildings and even some residential apartment complexes, the more typical DOD facility is characterized as a "base" by the Air Force, a "station" by the Navy, and a "post" by the Army. It typically occupies a fairly large land area, from several acres to many square miles. The buildings are not concentrated in one location, but often are distributed over an extended area. They are rarely large, multistoried structures. More typically, they are a fairly large collection of relatively small buildings, each assigned a specific use.

These buildings are connected by telephone cables and their supporting poles and conduits, all of which are presumably categorized as access facilities controlled by the premises owner, and the subject of this NPRM. Yet these facilities are not typical of the "riser cables" discussed in the NPRM. They have the following unique characteristics:

Survivability - Military communications must be capable of surviving natural disasters and hostile attacks, which require special system architectural modifications. For example, in order to provide added protection for critical users, a telecommunications provider may be required to install and maintain geographically separate on-base cabling to multiple users in the same building. Additionally, users may be served by switches located on different parts of the base, or by a switch on a totally different base.

Availability - In support of national security, an availability of 99.997% is required to telecommunications services. This standard substantially exceeds that required for normal commercial services.

Assured Service - The military requires a high level of assurance that selected users will be provided non-interrupted service during specific times to meet national security requirements. Measures such as multi-level precedence and preemption (MLPP) and dual homing of single subscribers on two switches are employed to meet those requirements. MLPP assigns a priority level to subscribers with an associated scheme for completion of calls, and preemption of lower priority calls when traffic approaches the capacity of the facilities.

Priority Restoration - Certain military users as well as selected tenants require restoration of services in shorter timeframes than is normally provided by conventional commercial services. In some cases, a one-hour restoration time is too long.

Priority Provisioning of Services - Similar to priority restoration, certain military users or other tenants require provision or termination of new services in extremely short timeframes. An example is pierside access to naval vessels.

HEMP Protection - Selected buildings on military bases require protection against high electronic magnetic pulse (HEMP), a consideration rarely, if ever, encountered in conventional commercial systems.

Grade of Service Requirement - The military requirement for grade of service is P.01, which means that there must be no more than a one percent probability of call blockage. The commercial standard is P.03 to P.05. This standard requirement may vary, however, among specific stations, buildings or tenants on a given base.

2. Personnel who reside on military installations are unique

DOD maintains and provides housing for military service members and their families at military installations. These residential units include (for service members and their families) multi-family structures, townhouse type units and single family dwellings. Unmarried service members are provided housing as well in multi-tenant structures - similar to "hotel suite" type facilities".

Occupants of DOD residential facilities differ from occupants of private, off-installation housing, in a number of important aspects.

- They normally reside on a given installation for a relatively short period of time usually less than 2-3 years.
- Often unmarried servicemembers deploy for months at a time leaving their housing vacant.
- Unmarried servicemembers are normally young and with limited financial resources (and market power).

- When military occupants leave installation housing it is normally to move out of the area to another state or to a foreign location.

3. The Unique Requirements of the Military May Require Exclusive Contracts

These unique requirements usually mean that the telecommunications networks on most military bases must be specifically designed for the needs of the installation and its occupants. They are rarely "plain vanilla" telephone systems. Usually, the special requirements add costs that would never be encountered in conventional office or residential environments. In addition the unique characteristics of the military personnel who reside on post require present special problems relating to telecommunications services.

4. Telecommunications Services on Military Bases Are Procured Competitively

The need to designate one entity as the "exclusive" telecommunications provider to a military base or positions thereof does not mean that there is no competition for that service. To the contrary, the military services are required by statute to procure competitively any and all services that could be provided by multiple vendors.¹ With regard to taking advantage of the new competitive environment related to local telecommunication services DOD has been a leader in seeking new competitive opportunities.

To illustrate, between January 1998 and May 1999, the Air Force solicited bids for local telephone access service on 33 bases (all with greater than \$100,000 annual billings). The resultant competitive awards yielded savings of \$15.6 million, for an average cost reduction of 32.2 percent. Corresponding savings from competitive bidding during the period July 1996 through December 1997 came to \$19.5 million, for an average cost reduction of 33.5 percent. The contract awards have

¹See 48 CFR 206

been spread fairly evenly between incumbents and new entrants.

5. Telecommunications Service "Concession Type Contracts"

Provide valuable telecommunications service opportunities to service members occupy barracks Type Facilities and Provide Critically Needed Revenue in Support of Morale, Welfare and Recreation Activities on Military Installations.

Morale, Welfare and Recreation (MWR) activities on post provide critically important individual and family support activities for military personnel and their families such as recreational activities, family support programs and other off duty activities. These MWR activities receive some appropriated fund support but also receive a significant part of their funding from user fees and contributions from non-appropriated fund activities.

Military exchanges on posts, operated by the Army and Air Force Exchange Service (AAFES) on Army and Air Force installations, the Navy Exchange Service (NEXCOM), on Navy bases, the Marine Corps Exchange (MCX) on Marine installations, and the Coast Guard Exchange Service (CGES) on Coast Guard installations, provided approximately 80% of the revenues they receive to military installations to support MWR activities. (In the case of the MCX the amount was 99%).

AAFES, NEXCOM, MCX and CGES earn income for MWR activities not only through sales at exchange stores but also through the use of concession contracts. One highly successful program relates to the award of concession contracts to provide telephone service on the military installations to occupants of military barracks (primarily unmarried or unaccompanied lower ranking enlisted personnel). For example, AAFES awarded a concession contract to Sprint for telephone service to barracks occupants which has guaranteed over \$15 million in income to AAFES since Feb 97, 80% of which has been returned to military installation for MWR activities. NEXCOM, MCX and CGES are on another contract - with AT&T; \$11.34 million guaranteed annual commissions for MCX activities and \$22.9 million guaranteed annual commissions for NEXCOM

activities, and \$719,000 guaranteed annual commissions for CGES activities.

These concession contracts (awarded competitively) not only provide critically needed revenue to support MWR activities for our military members and their families but also provide an outstanding value to the occupants of the barracks. The market power generated by these nationwide concession contracts provide the following benefits to the occupants of barracks as well as to the DOD:

- The ability to provide service locations in remote areas in support of military operations worldwide - such as Bosnia.
- Hugely competitive rate packages for servicemembers who have limited financial resources.
- Special provisions that mitigate or eliminate penalties for wireless phone customer who move to another domicile.
- The exchange service provider customer support in the event of problems with the telecommunications provider.
- The exchange service monitors contracts to insure the barracks occupants are receiving the best rates for services provided.
- Having one provider available at multiple installations enables barracks occupants to establish a credit rating despite frequent moves.
- Charges for moving phone service within a barracks facility (often \$40-\$75 per move) have been eliminated.
- Save the expenditure of millions of dollars of appropriated funds which would need to be spent to provide the telecommunications infrastructure necessary to serve the barracks. The service provider bears all costs to install, operate, maintain and repair infrastructure required.
- Customers in military barracks still have a choice of long distance server. The exchange concession contract is simply the default provider, similar to a hotel or dormitory, that has a contract with a specific telecommunications carrier. The occupant

can still utilize "dial around" through the use of 1-800 numbers of pre-paid calling cards or direct billed cards to use another long distance provider.

In short, DOD is concerned that the proposed rules would eliminate or severely restrict the ability of DOD appropriated and non-appropriated fund entities to contract for telecommunication services in a manner consistent with the unique characteristics of the military environment and those unique needs for the military community.

6. DOD Seeks Exemption for the Commission Proposed Rules:

DOD submits the unique characteristic of the military, its installations and activities, and the occupants of military installations necessitate that military commanders retain the flexibility they currently possess with regard to the provision of telecommunication services on base.

Accordingly, DOD requests that military installations and the activities of DOD appropriated and non-appropriated fund entities be exempt from the rules in this proposed NPRM.

Conclusion

While DOD understands and fully supports the Commission's efforts to extend the benefits of local service competition to all users of telecommunications services, including tenants in multi-tenant locations, DOD believes that the unique characteristics noted above justify exemption from the non-discriminatory access provisions under Commission consideration. For this reason, DOD respectfully requests that the Commission exempt DOD installations and the activities of DOD appropriated and non-appropriated fund entities from the provisions of this proposed NPRM.

Respectfully Submitted,



ROBERT N. KITTEL

Counsel for the

Department of Defense